

Notice of Allowability

Application No.

10/020,735

Examiner

Khatol S Shahnan-Shah

Applicant(s)

SHOEMAKER ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendments dated 12/23/2003.
2. ☒ The allowed claim(s) is/are 1, 3, 4, 5, 7, 8 and 9 renumbered 1-7 respectively.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 3/10/2004 .
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

Attachment to Notice of Allowance

1. Applicants' amendment and response, received 23 December 2003 are acknowledged.
2. Claims 1, 3, 4, 5, 7-15 are pending.
3. Claims 1, 3, 4, 5, 7-9 are under consideration.

Objections Withdrawn

4. Objection to the specification made in paragraph 5 of the office action mailed 12/03/2003, is withdrawn in view of applicants' amendment.

Rejections Withdrawn

5. Rejection of claims 2-4 and 6-8 under 35 U.S.C. 112, first paragraph made in paragraph 7 of the office action mailed 12/03/2003 is withdrawn in view of applicants' submission of deposit statement under Budapest Treaty for bacterial strains NRRL-30303 and NRRL- 30304.
6. Rejection of claims 5-9 under 35 U.S.C. 112, first paragraph made in paragraph 8 of the office action mailed 12/03/2003 is withdrawn in view of applicants' amendments.
7. Rejection of claims 1-9 under 35 U.S.C. 112, second paragraph made in paragraph 10 of the office action mailed 12/03/2003 is withdrawn in view of applicants' amendments.
8. Rejection of claims 1, 5 and 9 under 35 U.S.C. 102 (b) made in paragraph 13 of the office action mailed 12/03/2003 is withdrawn in view of applicants' amendments.

Examiner's Amendment

9. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the

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payment of the issue fee. Authorization for this examiner's amendment was given in a telephone interview with Curtis P. Ribando (reg # 27976) on 3/10/2004.

The application has been amended as follows:

a. Cancel non-elected claims 10-15.

b. Amend claims 3 and 4 as following:

Claim 3. (currently amended) The attenuated strain as described in claim 2 1 wherein said strain of *Flavobacterium columnare* is NRRL B-30303.

Claim 4. (currently amended) The attenuated strain as described in claim 2 1 wherein said strain of *Flavobacterium columnare* is NRRL B-30304.

c. Replace page 1 of the specification (containing the certificate of mailing) with the clean copy of page 1 of the specification attached to this document.

d. Enter the attached biological deposit certificates in this application.

Reason for Allowance

10. Claims 1, 3, 4, 5 and 7-9 are allowed. Claims are renumbered 1-7 respectively.

The following is an examiner's statement of reasons for allowance:

Claims are drawn to an attenuated strain of *Flavobacterium columnare* resistant to rifampicin and selected from group consisting of NRRL B-30303 and B-30304

The prior art fails to teach such strains.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khatol S Shahnan-Shah whose telephone number is (571)-272-0863. The examiner can normally be reached on 7:30am-4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F Smith can be reached on (571)-272-0864. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

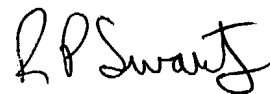
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Khatol Shahnan-Shah, BS, Pharm, MS

Biotechnology Patent Examiner

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March 10, 2004


RODNEY P SWARTZ, PH.D
PRIMARY EXAMINER